(1984) 10 AP CK 0016

In the Andhra Pradesh High Court

Indo National Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-10-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q
Constitution of India, 1950 — Article 133

Citation : (1985) 5 ECC 11 : (1985) 19 ELT 52

Hon'ble Judges : Sardar Ali Khan, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Judgement

Jeevan Reddy, J.—The petitioner is a limited company manufacturing dry battery cells known as "Nippo Batteries", having its factory at Nellore, Andhra Pradesh. The petitioner says that for the purpose of manufacturing dry battery cells, the petitioner imports zinc ingots from foreign countries through the Minerals and Metal Trading Corporation of India and that the zinc ingots are then melted in a furnace in their factory adding cadmium and lead as alloys. Then they are made into bars called `bus bars''. These bars are rolled to required thickness, the edges being unspecified and they are then fed into punching power press, whereby hexagonal shaped pellets are punched. These pellets will then be lubricated with graphite powder and extruded into zinc cans which are used as anodes in the manufacture of battery cells. The Central Excise authorities sought to levy duty upon the zinc bars treating them as `zinc strips'' within the meaning of tariff item No. 26(B)(2) of the First Schedule to the Central Excises and Salt Act, 1944. A show cause notice was issued calling upon the petitioner to show cause why the zinc strips manufactured without a Central Excise licence should not be confiscated under Rule 173Q of the Central Excise Rules, 1944 and why a penalty should not be imposed upon the petitioner. He was also called upon to show cause why duty should not be levied upon the bars. The petitioner submitted his explanation contending that the bars obtained by the melting of zinc ingots are not excisable goods and, therefore, they cannot be subjected to duty as zinc strips. It was also contended that the said bars cannot be regarded as manufactured goods since they are obtained only during the course of manufacturing process and do not constitute a new or finished product, which is marketable.

2. These contentions were overruled by the Deputy Collector, Central Excise, Hyderabad, by his order dated 5-5-1975, which was confirmed in appeal by the Appellate Collector and also by the Government of India in revision.

3. The Central Excise authorities have negatived the petitioner''s contentions relying upon the decision of the Allahabad High Court in Geep Flash Light Industries v. Union of India and Others - 1979 E.L.T. 674. We have perused the decision and we agree with the reasoning and the conclusion arrived at by the learned Judges. We are told that against the decision of the Allahabad High Court, an appeal is now pending in the Supreme Court. Be that as it may, in view of the decision of the Allahabad High Court, no specific arguments were addressed before us as to why we should take a different view from that of the Allahabad High Court. We, therefore, dismiss this writ petition, but, in the circumstances, without costs.

4. Mr. P. Ramachandra Reddy, the learned Senior Advocate on behalf of the writ petitioner, makes an oral request for grant of leave to appeal to Supreme Court under Article 133 of the Constitution of India. In view of the fact that the Supreme Court is stated to have granted special leave against the decision of the Allahabad High Court, which we have followed herein, and the appeal is now said to be pending in the Supreme Court, we are inclined to grant a certificate under Article 133 of the Constitution of India. The said certificate shall issue accordingly.

5. Mr. Ramachandra Reddy makes a further request that the collection of the duty may be stayed for a period of two months to enable the petitioner to approach the Supreme Court and obtain appropriate orders. In the circumstances of the case, we direct that the duty payable by the writ petitioner in view of the dismissal of the writ petition, shall not be collected for a period of two months.

